CACFP-335

Subject: Contracting with Seriously Deficient Institutions or Officers

To: STATE AGENCY DIRECTORS (Special Nutrition Programs)

Colorado DH, Iowa, Kansas, Missouri DH, Montana DHES, Nebraska ED, North Dakota, South Dakota, Utah and Wyoming ED

We were informed by one of our State Agencies (SA) that personnel from an institution that was declared seriously deficient had contacted other Child and Adult Care Food Program (CACFP) institutions and offered their services for various administrative functions. Although the CACFP Regulations do not specifically address the issue of currently participating institutions entering into an agreement with a seriously deficient institution or former officers of that seriously deficient institution, we strongly advise against such an arrangement.

We base our decision, to not allow either the institution, or persons associated with the institution to participate in the Program in any manner, on Part 226.6(c). This section of the Regulations specifies that once an institution has been included on the list of seriously deficient institutions, it shall be ineligible to participate in the Program until such time as Food and Nutrition Service (FNS), in consultation with the appropriate SA, determines that the serious deficiency which resulted in the ineligible status has been corrected. Any institution which is identifiable with a seriously deficient institution through its corporate organization, officers, employees, OR OTHERWISE shall also be considered ineligible unless it is demonstrated to the satisfaction of the SA, with FNS concurrence, that good cause exists for considering the institution distinct from the seriously deficient institution. Therefore, the institution that chooses to 'contract' with a seriously deficient institution or its officers, etc., could possibly be considered ineligible for CACFP participation.

Another factor to consider is that FNS Instruction 792-2, Revision 1, "Contracting Out Management Functions in the CACFP," states that administrative functions such as monitoring, corrective action, and preparation of application materials cannot be contracted out under any circumstance. Also, free and reduced price information is confidential and must not be viewed by anyone other than institution officials. In addition, the cost of paying "recruiters" to recruit homes (not providers who recruit other providers) is currently very questionable as an approvable budget item. As you can see, there are not many
other administrative functions that can be contracted out. It would not appear to be financially sound for an institution to enter into an agreement with a seriously deficient institution that would only be able to provide very limited services, as well as jeopardize its eligibility to participate in the Program.

If you have questions, contact my staff at (303) 844-0359.

ANN C. HECTOR
Regional Director
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